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January 19, 1956
Opinion No. 56-26

REQUESTED BY: Honorable William A. Sullivan
State Senator

OPINION BY: ROBERT MORRISON, The Attorney General
D. Kelly Turner, Assistant Attorney General

QUESTION 1: Is a person who makes a practice of successively building houses, moving his family into them while building another, and then selling the house in which he has lived, considered a contractor under the terms of Sections 67-2301 and 67-2303, ACA, 1939?

CONCLUSION: Yes.

QUESTION 2: Does a person who builds one or more houses on his own property with the intention of selling them once completed, but who has no prior contractual arrangement to build the houses for any other person, come within the definition of a contractor under the terms of Sections 67-2301 and 67-2303, ACA, 1939, and is he therefore required to have a contractor's license?

CONCLUSION: Yes.

In response to your inquiry as to whether certain builders are required to obtain contractor's licenses under Section 67-2301 and 67-2303, ACA, 1939, now ARS 32-1101 and 32-1121, the statutory definition of contractors is:

"32-1101. Definition of contractor. -- Within this chapter, 'contractor' means a person * * * who, for either a fixed sum, * * * or other compensation other than actual wages, undertakes to, * * * or does himself or by or through others, construct, * * * any building, * * *."

ARS 32-1121 excepts from that definition:

"4. Sole owners of property building or improving structures thereon for the use and occupancy of

such owners and their families and not intended for sale, or the construction, alteration, improvement or repair of personally owned property. "

The answer to your first question hinges entirely on the intent of the builder and, more importantly, whether it can be established that the builder intends to sell the house. A course of conduct, described by you, continued over a considerable period would establish that the real intent of the builder was to sell the houses and for that reason he would be required to be licensed.

Your second question sets forth facts clearly within the definition of contractor. The statute does not require the owner to have "prior contractual arrangement to build the house for any other person." This type of operation, commonly referred to as "speculative building", is followed in nearly all subdivision building and encompasses the great majority of all home construction.

Our statute, enacted in 1951, is similar to the California Act, and the Courts of that state held in Moon v. Goldstein, 158 P.2d 1004, that "an owner who builds not for his own occupancy" is required to obtain a contractor's license.

Since the 1952 amendment to the Excise Revenue Act, such a licensed speculative builder also is required to obtain a privilege transaction tax license.

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